

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7731

Petition of Vermont Electric Power Company, Inc. and)
Vermont Transco LLC for a certificate of public good)
pursuant to 30 V.S.A. § 248 authorizing the construction)
of the "Georgia Substation Project" consisting of)
rebuilding the current switching station located in)
Georgia, Vermont)

Order entered: 7/8/2011

PROTECTIVE ORDER RE
CRITICAL ENERGY INFRASTRUCTURE INFORMATION

I. INTRODUCTION

On April 7, 2011, Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, "VELCO") filed a Motion for Confidential Treatment of certain exhibits that it alleges constitute Critical Energy Infrastructure Information ("CEII").¹ At the May 6, 2011, prehearing conference, I requested that VELCO provide additional information in support of the request for confidential treatment. On June 6, 2011, VELCO filed a Revised Motion for Protective Order for confidential treatment of certain exhibits already filed under seal that it alleges constitutes CEII. VELCO's Revised Motion also states that it seeks "to protect any future confidential information that may be submitted by VELCO in the course of this proceeding" that it alleges contains confidential information.² VELCO submitted an averment log to support its request for a protective order. No party opposed VELCO's motion.

1. The Federal Energy Regulatory Commission ("FERC") defines CEII as:
Specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure that: (i) relates details about the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person in planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and (iv) does not simply give the general location of the critical infrastructure.

2. Revised Motion at 1.

II. DISCUSSION

I have reviewed the motion and supporting materials, and conclude that VELCO has made a *prima facie* showing that confidential treatment is warranted for the information contained in the exhibits identified in VELCO's motion and supporting averment log. Therefore, I hereby grant VELCO's motion for a protective order for the information in the exhibits at issue, which were already filed with the Public Service Board ("Board"). However, without additional information, it would be premature to issue a protective order for any future information filed in the course of this proceeding.

To promote full public understanding of the basis for its decisions, the Board has actively taken steps to limit the amount of information subject to protective orders. The Board has encouraged parties to remove material from that protection to the extent possible. Since 2001, the Board has required petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.³ Generally, the Board only resolves disputes about information when there is a genuine disagreement about its confidential nature.⁴ However, even when the motion is uncontested the Board will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal.

In determining whether to protect confidential information, we consider four issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?

3. *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket, No. 6545, ("Entergy Docket"), Order of 11/9/01 at 5-6.

4. *Id.* at 6.

- (2) Does the matter sought to be protected contain CEII?
- (3) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (4) Has the party seeking protection shown "good cause" for invoking the Board's protection?⁵

VELCO maintains that the exhibits in question fall within the Federal Energy Regulatory Commission ("FERC") definition of CEII because they relate to the bulk transmission system's exposure to system contingencies and contain specific details about certain VELCO facilities. VELCO also maintains that the information in the exhibits could be used by a third party wishing to do harm to or severely damage critical electric system assets. In particular, Exhibit Pet. CD-2 is a system study that examines in detail the impacts on the bulk transmission system under various contingencies. Exhibit Pet. CD-3 is an analysis of generation alternatives that examines in detail the impacts on the bulk transmission system by adding generation rather than transmission to address a reliability deficiency specifically identified in the analysis. Exhibit Pet. CD-4 is a detailed analysis of the non-transmission alternatives to the proposed reliability solution that uses specific information about the bulk transmission system and deficiencies. Exhibit Pet. MB-8 is a one-line diagram that contains specific voltage engineering notes and component information, as well as other elements of the transmission system.

I have reviewed the motion and supporting materials, and I have applied the existing standard. With respect to the alleged CEII, I conclude that VELCO has made a prima facie showing that the redacted information falls within the FERC definition of CEII. FERC began limiting public access to CEII in October of 2001, in response to the terrorist attacks of September 11, 2001, with the issuance of Treatment of Previously Public Documents, Docket No. PL02-1-000, 97 F.E.R.C. 61,030 (2001). FERC has since issued a series of subsequent orders that establish formal procedures for the management and consistent treatment of, and restrictions on access to, CEII (including but not limited to Orders No. 630, 630-A, 643, 662, 702 and 890).⁶

5. See, e.g., Entergy Docket, Order of 3/29/02 at 2.

6. FERC procedures for the management of CEII are also found at 18 C.F.R. §§ 388.112 and 388.113.

Because VELCO has made a *prima facie* showing that the redacted information contained in the exhibits detailed above is CEII, the information warrants confidential treatment. Therefore, I grant VELCO's motion for confidential treatment of the specific exhibits detailed above, i.e., Exhibits Pet. CD-2, CD-3, CD-4, and MB-8.2

III. ORDER

Therefore, IT IS HEREBY ORDERED that the Confidential Information provided by VELCO (as described in VELCO's Motion) shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any documents that discuss or reveal documents that constitute confidential material, shall be placed in a sealed record by filing such information in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and docket number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Board except by order of the Board. Notwithstanding such a statement, the members of the Board, any employee or consultant specifically authorized by the Board to assist the Board in this proceeding, and any Hearing Officer appointed to this Docket may have access to such sealed confidential information, but shall not disclose such information to any person.
2. At any hearing or conference in this proceeding, no persons, other than those who have signed or agreed to be bound by this Order and the Protective Agreement approved in the Order of July 8, 2011, and those whom the Board has expressly authorized to have access to this confidential information, shall be permitted to give, hear or review testimony given or held with respect to this confidential information.
3. Each Board stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Board stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked "Confidential" and shall be sealed and filed with the Clerk of the Board, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential

information pursuant to this Order.

4. The Board retains jurisdiction to make such amendment, modifications and additions to this Order as it may, from time to time, deem appropriate, including any such amendments, modifications or additions resulting from a motion made pursuant to the Protective Agreement.

5. Any party or other person may apply to the Board for an amendment, modification or addition of this Order.

SO ORDERED.

Dated at Montpelier, Vermont this 8th day of July, 2011.

s/Bridgette Remington
Bridgette Remington, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: July 8, 2011

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: *This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*